



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
THE S. A. GERRARD COMPANY }

Appearances:

For Appellant: **Haskins** and Sells of Los Angeles

For Respondent: **Albert A. Manship**, Franchise Tax
Commissioner

O P I N I O N

This is an appeal, pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Statutes of 1929, Chapter 13), from the action of the Franchise Tax Commissioner in proposing an additional tax based upon the net income of The S. A. Gerrard Company for the year ended November 30, 1928. The sole question raised concerns the method of allocation to be employed in the apportionment of the net income of the Appellant to California under Section 10 of the Act.

The company is engaged in the business of producing, purchasing and marketing various kinds of fruits and vegetables. Its operations are carried on both within and without California. The corporation was organized under the laws of Ohio and maintains its principal place of business in Cincinnati, where most of the sales of produce are consummated. The accounts are kept so as to show the sales and expenses of each enterprise or "deal" so that it is possible to ascertain from the company's records the net income derived from its California business.

By his proposed additional assessment the Franchise Tax Commissioner contemplated basing the tax on all net income arising out of the California "deals" without making allowance for the fact that more than ninety per cent of the sales from such business were of an intrastate character in Ohio. Since the filing of this appeal, the Commissioner advises that "reconsideration has recently been given this matter in connection with the protests of other taxpayers and it has been determined that the S. A. Gerrard Company is entitled to the allocation which it claimed, and it is our opinion therefore that the proposed additional assessment should be withdrawn."

In view of this concession on the part of the Franchise Tax Commissioner, we shall not attempt an extended analysis of the problems involved. From such information as we have on the subject, we can see no reason why the withdrawal suggested should not be made. If the Commissioner is now convinced that the allocation urged by the taxpayer is proper, we assume that he has reached this conclusion deliberately and with due regard for the rights of the state.

Appeal of The S. A. Gerrard Company

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Reynold E. Blight, Franchise Tax Commissioner, in overruling the protest of The S. A. Gerrard Company, a corporation, against a proposed additional assessment under Chapter 13, Statutes of 1929, based upon the net income of said corporation for the year ended November 30, 1928, be and the same is hereby reversed insofar as such action disallows the method of allocation of net income claimed by said corporation.

Done at Sacramento, California, this 24th day of February, 1931, by the State Board of Equalization.

Jno. C. Corbett, Chairman
Fred E. Stewart, Member
H. G. Cattell, Member
R. E. Collins, Member

ATTEST: Dixwell L. Pierce, Secretary